

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:71614-DB

**High Court of Judicature at Allahabad
(Lucknow)**

Reserved on 03.09.2024

Delivered on 24.10.2024

Court No. - 2

Case :- FIRST APPEAL No. - 20 of 2023

Appellant :- Shashi Pal

Respondent :- Sachin Kumar Pal

Counsel for Appellant :- Anup Kumar Mishra

Counsel for Respondent :- Manjeet Singh

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per : Om Prakash Shukla, J.)

- (1) Heard Shri Anup Kumar Mishra, learned Counsel representing the appellant and Shri Manjeet Singh, learned Counsel representing the respondent.
- (2) This appeal under Section 19 (1) of the Family Court Act, 1984 has been filed by the wife/appellant, **Shashi Pal**, seeking enhancement of the quantum of maintenance *inter alia* on the grounds that merely Rs.1000/- has been granted by the Additional Principal Judge, Family Court, Pratapgarh (hereinafter referred to as the '**Family Court**') vide order dated 16.11.2022 in Original Suit No. 737 of 2017 filed by her under Section 18 of the Hindu Adoptions and Maintenance Act, 1956.
- (3) The factual matrix of the case at hand, which has been highlighted by the appellant, is that marriage of appellant and

respondent was solemnized on 09.05.2006 in accordance with Hindu rites and rituals. In the said marriage, appellant's father gave dowry including household goods as per his capacity to the respondent. Out of their wedlock, one child, namely, Sauryapal, was born on 03.08.2008. In the year 2008, the father of respondent/husband, who was working in the railway department, died, as a consequence of which, the respondent/husband got appointment in the railway department on compassionate ground in the year 2008 itself. After getting job in the railway department, the respondent/husband became careless towards his marital life and on 26.06.2012, he solemnized a second marriage illegally with one Nilam Pal son of Gyan Prakash Pal, residence of Naya Mal Godam Road, P.S. Kotwali Nagar, district Pratapgarh and eventually the appellant was thrown out of her matrimonial home in September, 2017.

- (4) Based on the aforesaid facts/allegations, the wife/appellant instituted Original Suit No.737 of 2017 under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 on 27.10.2017 before the Family Court, claiming half of the appellant's salary towards maintenance. In the said suit, notice was issued to the defendant/husband. In response thereof, the defendant/husband filed his objection, denying all the allegations made in the plaint. It has been stated by the defendant/husband that plaintiff/appellant herself left him (defendant/husband) and the children on 10.03.2005 and has started living at her father's residence

and since then, marital relationship has not been established between them. It has been stated in para-21 and 22 of the objection that it was only after husband's sincere persuasion, the appellant got ready to dissolve the marriage subject to payment of Rs.15,00,000/- in one lump sum and also returning the *stridhan* to her. Thereafter, the husband/ respondent has returned *stridhan* to the appellant/wife and also handed over a Demand Draft No. 002398 amounting to Rs.5,00,000/- to the wife/appellant on the date of institution of a suit under Section 13-B of the Hindu Marriage Act, 1955, which was filed seeking Divorce on mutual consent, however, subsequently, the said suit filed under Section 13-B of the Hindu Marriage Act, 1955 was dismissed due to non-presence and non-participation of the wife/appellant.

- (5) The learned Counsel has drawn attention of this court towards the factum of the wife/appellant having instituted Case No. 240 of 2020 under Section 125 Cr.P.C. seeking maintenance. It has also been stated in para-27 of the objection by the husband/ respondent that the only child born out of the wedlock is in his custody and he is spending about Rs.10,000/- per month on his education, health and food. In para-28, it has been stated that the suit instituted by the plaintiff/appellant is contrary to the object of Section 18 of the Hindu Adoptions and Maintenance Act, 1956. Furthermore, as the plaintiff/appellant herself has instituted a suit under Section 125 Cr.P.C. before the Court

seeking maintenance, the present suit filed under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 ought to have been held non-maintainable and rejected.

- (6) On the contrary, in support of her case, the wife/appellant (P.W.1) has filed her oral depositions on affidavit (marked as 17Ka2) and also filed her brother's depositions (P.W.2-Pramod Kumar) on affidavit (marked as 18Ka 2) before the Family Court. Apart from it, wife/appellant has also filed pay-slip of her husband/respondent (marked as 14Ga/2) along with the list of document (marked as 14Ga1) before the Family Court.
- (7) The record of the learned Family Court reveals that after filing of objection to the plaint, the husband/respondent did not respond and as such, vide order dated 07.12.2021, the Family Court proceeded *ex parte* against the husband/defendant/respondent.
- (8) The Family Court, on appraising the depositions of appellant P.W.1-Shashipal (appellant) and her brother P.W.2-Pramod and also going through the income of the defendant/husband and also the fact that in a proceeding under Section 125 Cr.P.C., Rs.5000/- per month was ordered to be paid to the appellant towards maintenance, partly allowed the instant suit *ex parte* vide order dated 16.11.2022 and directed the defendant/husband/respondent to pay Rs.1000/- per month from the date

of institution of the suit i.e. w.e.f. 27.10.2017 to his wife/appellant towards maintenance.

- (9) Not satisfied with the aforesaid quantum of maintenance granted vide order dated 16.11.2022, the wife/appellant has filed the instant appeal.
- (10) Learned Counsel representing the wife/appellant has argued that the Family Court had passed the impugned order in a very cursory manner without rightfully appreciating the conduct of the respondent during the proceedings before the Family Court. He submitted that the version of the appellant-wife, who had stepped into the witness box, as also the version of the other witnesses examined by her had remained unchallenged, as the Family Court had proceeded ex parte against the respondent because he did not appear before the Family Court and, therefore, there was no reason for the Family Court not to believe the version of the appellant-wife which was deposed by her on oath. However, the Family Court, without there being any evidence on record adduced by the respondent, has only granted a meagre amount of Rs.1000/- per month as maintenance to the appellant by means of the impugned order.
- (11) The learned counsel for the respondent, on the other hand, besides reiterating the objections already taken by the husband before the learned Family Court, has also argued that the

appellant had made various complaints against the respondent relating to his second marriage before his employer-Northern Railway Lucknow, which resulted in instituting an inquiry against him, leading to a punishment under Rule 21 of the Railway Services (Conduct) Rules, 1966, by virtue of which the payment of the respondent has been reduced from basic pay of Rs.32900/- to Rs.19900/-. The learned counsel, in this regard has drawn the attention of this court to the punishment order dated 23.09.2020, which is Annexure No.2 to the objection. According to the learned counsel, after the aforesaid punishment order, the respondent is now getting total salary of Rs.23078/- after deduction of Rs.11644/-. He submits that the appellant's son is studying in 10th class and his monthly fees is Rs.2000/- and Tuition Fee is also Rs.2000/- per month and daughter of the respondent is studying in KG Nursery and her monthly fee is Rs.1100/- per month and her vehicle charges is also Rs.1000/- per month and as such, total expenses of Rs.10,000/- per month is being spent towards the education of the children of the respondent. Apart from it, according to learned Counsel, the respondent's mother is aged about 64 years, who due to her old age frequently falls ill and as a huge amount also goes towards the medical expenses of his mother and as a result of which the respondent is unable to bear the expenses from his total salary of Rs.23078/- and as such has on several occasion made a request to the department to not deduct the Insurance amount. Acting upon his request, from the month

of June, 2024, the department started to pay the net amount of Rs.34989/- per month. In this backdrop, he prays that the salary being earned by him is not even sufficient to meet his own expenses as stated herein and thus submitted that the amount of maintenance of the appellant which have been passed by the Family Court is adequate and proper.

(12) Having regard to the rival submissions of the learned Counsel for the parties and going through the record available before this Court, the point of consideration before us is twofold, (I) whether suit filed by the appellant under Section 18 of the Hindu Adoption and Maintenance Act, 1956 is maintainable especially in view of the order of maintenance granted under Section 125 of the Cr.P.C.?; and (ii) whether quantum of maintenance granted by the Family Court vide impugned order is adequate, if no, then what reliefs ?

(13) As far as point no. (I) *whether suit filed by the appellant under Section 18 of the Hindu Adoption and Maintenance Act, 1956 is maintainable specially in view of the order of maintenance granted under Section 125 of the Cr.P.C.?*, is concerned, we find from perusal of the impugned order that this point has not been considered by the Family Court while passing the impugned order even though specific pleadings in this regard at paras-28 and 29 of the objection, have been made by the husband/respondent. But since specific plea in this regard has

been made by the respondent, therefore, we deem it apt to decide this issue in the present Appeal.

(14) It is not in dispute that the appellant has sought maintenance by initiating two separate proceedings i.e. (i) under Section 125 Cr.P.C.; and (ii) under Section 18 of the Hindu Adoption and Maintenance Act, 1956. In the proceedings under Section 125 Cr.P.C., the respondent/husband was directed to pay Rs.5000/- per month to the wife/appellant vide order dated 21.05.2022. After passing this order of maintenance, the Family Court, on taking into consideration the quantum of maintenance granted in the proceedings under Section 125 Cr.P.C., has also granted maintenance of Rs.1000/- per month in the proceedings under Section 18 of the Act, 1956.

(15) Hon'ble the Supreme Court in the case of **Nagendrappa Natikar Vs. Neelamma** : (2014) 14 SCC 452 has held that proceedings under Section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18 (2) of the Hindu Adoption and Maintenance Act, 1956.

(16) Later on, the Apex Court in its celebrated judgment in **Rajnish v. Neha and Another** : (2021) 2 SCC 324 has laid down

comprehensive guidelines pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr.P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. The relevant directions contained in **Rajnesh (supra)** reads as under :-

“Directions on overlapping jurisdictions

It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous

proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”

- (17) From perusal of the record of the Family Court, we find that the appellant has filed additional affidavit dated 17.10.2022, wherein at para-6, the factum of granting maintenance under Section 125 Cr.P.C. has been narrated. Therefore, there is full disclosure of the maintenance having been awarded under section 125 of the Cr. P.C. Thus, in view of the Rajneesh case (mentioned supra), we are of the view that the suit filed by the appellant under Section 18 of the Hindu Adoption and Maintenance Act, 1956 was very much maintainable and the Family Court has rightly entertained the suit filed by the appellant. Point no.1 is answered in affirmative in favour of the appellant.
- (18) Now, we come to the second point i.e. whether quantum of maintenance granted by the Family Court vide impugned order is adequate, if no, then what reliefs ?
- (19) Indeed, it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and can not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In

Chaturbhuji vs, Sita Bai : (2008) 2 SCC 316, the Apex Court has held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy.

- (20) In the instant case, the Family Court had not only over-looked and disregarded the aforesaid settled legal position but has proceeded with the proceedings in absolutely pervert manner. The right of the respondent to cross-examine the witnesses of the appellant-plaintiff was closed as he had failed to appear before the Family Court. The allegations made by the appellant-wife in her evidence before the Court had remained unchallenged. She had clearly stated as to how she was harassed and subjected to cruelty by the respondent, which had constrained her to leave the matrimonial home, and as to how the respondent had failed and neglected to maintain her and illegally entered into a second marriage and is living now with the second wife and his children. She had also stated that her father is no more and she is living with her old aged mother, who has also having no source of income.
- (21) This Court finds that even if this meagre amount of Rs. 1000/-, when added to the maintenance amount as granted under Section 125 Cr.P.C to the appellant, the said amount cannot be termed as adequate or commensurate to maintain a living in

today's society. The Court should not forget that any maintenance awarded should not be merely ornamental or defeat the very purpose for which it has been provided for under the statute. The learned Family Court was expected to be more realistic and pragmatic in awarding the maintenance amount and should not be oblivious to the daily basic needs required for sustaining in today's world, keeping in mind that the sheer object of granting maintenance under any law is to afford the weaker party with sufficient means to sustain herself/himself.

(22) This Court would have remanded the matter back to the Family Court for considering it afresh, however considering the fact that the matter has been pending before this Court since 2023, and remanding would further delay the proceedings, this Court deems it proper to pass this order.

(23) As observed herein above, the fulcrum of the argument of respondent rests on the hinge that he gets a net amount of Rs.34989/- from salary w.e.f. June, 2024 as is evident from salary slip of respondent-husband enclosed as Annexure No.5 to the objection, out of which Rs.10,000/- per month is being spent on the children and, therefore, according to him, the salary is not sufficient to enhance the amount of maintenance of the appellant which has been passed by the Family Court. However, this plea is not acceptable in the facts of the case.

Even after taking into consideration the photocopies of the documents filed in respect of the expenses incurred by the respondent regarding education of the daughter, the monthly tuition fee is only Rs.1100/- as per the said document. The respondent being an able bodied man, he is obliged to earn by legitimate means and maintain his wife.

- (24) Having regard to the evidence of the appellant-wife before the Family Court and having regard to the other evidence on record, this Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellant.
- (25) Considering the totality of facts and circumstances, appellant shall pay Rs.1000/- per month as maintenance from the date of filing of the suit till May, 2024 and keeping in view that the total salary of the respondent/husband enhanced to about Rs.34,989/- per month w.e.f. June, 2024, we deem it proper to enhance the maintenance amount from Rs. 1000/- awarded by the learned Family Court to Rs.4000/- per month w.e.f. June, 2024 to the appellant-wife, which shall be in addition to the maintenance allowance of Rs. 5,000/- granted by the trial Court under Section 125 Cr.P.C. Point No.2 is decided accordingly.
- (26) In view of the aforesaid, it is directed that the respondent/husband shall pay maintenance amount of Rs. Rs. 1000/- per

month from the date of filing of the suit till May, 2024 and shall pay Rs. 4000/- per month to the appellant-wife w.e.f. June, 2024. The entire amount of arrears shall be deposited by the respondent in the Family Court within eight weeks from today, after adjusting the amount, if any, already paid or deposited by him.

(27) The impugned order dated 16.11.2022 is modified to the aforesaid extent.

(28) The appeal stands **allowed in part** accordingly.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 24th October, 2024
Ajit